



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D C 20463

**SEP 30 2004**

Lyn Utrecht, Esquire  
Ryan, Phillips, Utrecht & MacKinnon  
1133 Connecticut Avenue, N.W., Suite 300  
Washington, D.C. 20036

**RE: MUR 5390**

Dear Ms. Utrecht:

On October 22, 2003, the Federal Election Commission notified your client, Epiphany Productions, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on September 14, 2004, found that there is reason to believe Epiphany Productions, Inc. violated 2 U.S.C. § 441b, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
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5 RESPONDENT: Epiphany Productions, Inc.  
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MUR 5390

8 **I. INTRODUCTION**  
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10 Public Citizen filed a complaint with the Federal Election Commission ("the  
11 Commission") on October 16, 2003, alleging that Robert Mitchell Delk ("Mitch Delk"),  
12 Senior Vice President of Government Relations at the Federal Home Loan Mortgage  
13 Corporation ("Freddie Mac") between January 1999 and March 2004, made excessive  
14 contributions in violation of the Federal Election Campaign Act of 1971, as amended  
15 ("the Act"), in connection with fundraising dinners he hosted at Ser Inc. (d/b/a Galileo  
16 Restaurant, hereinafter "Galileo") during the 2001-2002 election cycle. The complaint  
17 further alleges that Epiphany Productions, Inc., a Freddie Mac vendor, made corporate  
18 contributions in violation of the Act by failing to make reasonable efforts to collect  
19 payments from campaign committees for organizational services it rendered in  
20 connection with the fundraising dinners.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 Between 1999 and May 2003, Mitch Delk sponsored campaign fundraising  
23 dinners at Galileo for the benefit of Members of Congress who served on the House and  
24 Senate Committees that oversee Freddie Mac. Epiphany Productions, Inc., provided  
25 organizational services in connection with the fundraising dinners. These services  
26 included sending fax invitations for fundraising dinners, making solicitation phone calls,  
27 providing a staff person at the events, and preparing in-kind contribution notifications to  
28 the recipient campaign committees. While Mr. Delk coordinated these services,

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1 Epiphany's fees were apparently to be paid by the campaign committees that benefited  
2 from the fundraisers.

3 The complaint alleges that Epiphany's provision of services to the campaign  
4 committees constituted corporate contributions made in violation of 2 U.S.C. § 441b  
5 because Epiphany provided services in connection with nineteen (19) fundraising dinners  
6 and was not paid by the benefiting campaign committees, and provided services in  
7 connection with nineteen (19) additional fundraising dinners and was paid up to 20  
8 months late.

9 The Act prohibits corporations from making contributions or expenditures in  
10 connection with any Federal election. *See* 2 U.S.C. § 441b(a). The term "contribution"  
11 includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of  
12 money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2). The term "anything  
13 of value" includes the provision of any goods or services without charge or at a charge  
14 which is less than the usual or normal charge for such goods or services. *See* 11 C.F.R.  
15 § 100.7(a)(1)(iii). Thus, a prohibited corporate contribution would result if Epiphany  
16 provided organizational services in connection with the fundraising dinners without  
17 charging the campaign committees. In addition, a prohibited corporate contribution  
18 results if a corporate vendor extends credit to a political committee and fails to make a  
19 "commercially reasonable attempt" to collect the debt. *See id.*; *see also* 11 C.F.R.  
20 § 100.7(a)(4).<sup>1</sup> Thus, the critical question in this matter is whether Epiphany timely  
21 charged the campaign committees for the services it provided and made commercially  
22 reasonable attempts to collect the amounts owed.

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<sup>1</sup> An extension of credit occurs, *inter alia*, when a political committee fails to make full payment to the creditor by a previously agreed to due date. *See* 11 C.F.R. § 116.1(e).

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1           Epiphany claims that it sent written invoices to each campaign charging them the  
2           usual and normal rate for the services provided and that, although "a handful" of  
3           campaigns have not paid, it continues to make attempts to collect fees owed by them.  
4           Epiphany asserts that the outstanding debts do not constitute contributions because it has  
5           made a commercially reasonable attempt to collect the debt. Specifically, Epiphany  
6           states that in addition to written invoices that were sent to each campaign committee, at  
7           least two follow-up phone calls were made and additional past-due notices will continue  
8           to be sent until the debts are paid.

9           According to a news article attached to the complaint, some campaigns stated that  
10          they were never billed or were billed late by Epiphany. *See* Kathleen Day, "Influence by  
11          volume; Freddie Mac lobbyist got a big discount on GOP fundraising dinners at Galileo,"  
12          Washington Post (Aug. 4, 2003). The article reported:

13                 Rep. Katherine Harris's (R-Fla.) campaign manager,  
14                 Jessica Furst, for example, said "we never received an  
15                 invoice" from Epiphany for a Galileo dinner on June 4,  
16                 2002. A spokesman for Rep. Michael Ferguson (R-N.J.)  
17                 said he received no invoice from Epiphany for either of two  
18                 Galileo dinners. Rep. Gary G. Miller, (R-Calif.) never  
19                 received a bill for a Galileo dinner on July 9, 2002, a  
20                 spokesman said.

21                 Rep. Doug Ose (R-Calif.), paid \$606 to Epiphany on Oct.  
22                 9, 2002, for a Galileo dinner on June 27, 2001. "We were  
23                 billed late, but we paid promptly," a spokesman for Ose  
24                 said. *Id.*

25                 Similar to Epiphany's response to the complaint, the article contains the following  
26                 statement of Epiphany's co-founder, Julie Wadler: "Epiphany Productions has invoiced  
27                 every campaign for whom we have done a fundraiser. We have received or expect to  
28                 every campaign for whom we have done a fundraiser. We have received or expect to  
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1 receive payments on all invoices.”<sup>2</sup> *See id.* Significantly, Epiphany fails to address in its  
2 response to the complaint *when* the corporation charged the campaign committees for its  
3 services. Epiphany submitted copies of invoices to Friends of Katherine Harris and Gary  
4 Miller for Congress in support of its claim that it invoiced the committees. However, the  
5 date on the invoice to Friends of Katherine Harris is August 21, 2002, over two months  
6 after the fundraising dinner, which was held on June 4, 2002; the date on the Gary Miller  
7 for Congress invoice is November 13, 2002, four months after the fundraising dinner,  
8 which was held on July 9, 2002.

9 Notably, the dates reflected on the invoices submitted by Epiphany are  
10 inconsistent with reported statements of campaign representatives that, as of August 4,  
11 2003, the date of the news article, the respective committees had not received an invoice  
12 from Epiphany. At the same time, there is information suggesting that some committees  
13 may have been billed far later than one would reasonably expect for a vendor. For  
14 example, nothing in Epiphany’s response addresses the report in the article that Rep.  
15 Doug Ose’s campaign was sent an invoice in or around October 2002 for a dinner that  
16 took place over a year earlier on June 27, 2001. In addition, given that some committees  
17 reportedly paid up to 20 months late without any action by Epiphany other than a couple  
18 of purported follow-up phone calls suggests that Epiphany may not have made reasonable  
19 attempts to collect the amounts owed.<sup>3</sup> Based on the foregoing, there is reason to believe  
20 Epiphany Productions, Inc. violated 2 U.S.C. § 441b.

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<sup>2</sup> Julie Wadler, co-founder of Epiphany Productions, Inc., previously served as Deputy Finance Director of the National Republican Congressional Committee, and currently serves as Secretary-Treasurer of the Leadership Forum.

<sup>3</sup> The complaint asserts that nearly all of the late payments were received only after a news story on the Delk fundraisers was published by the *Wall Street Journal* on July 30, 2002. *See* John McKinnon, “Freddie Mac’s Friend in Need: Bills Languish as Top Lobbyist Raises Funds for Key House Members,” *Wall Street Journal* (July 30, 2002).